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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,778	12/17/2001	Douglas D. Sjostrom	02-35-0385 / 00167-456001	4406

7590

11/29/2002

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EXAMINER

NGUYEN, VI X

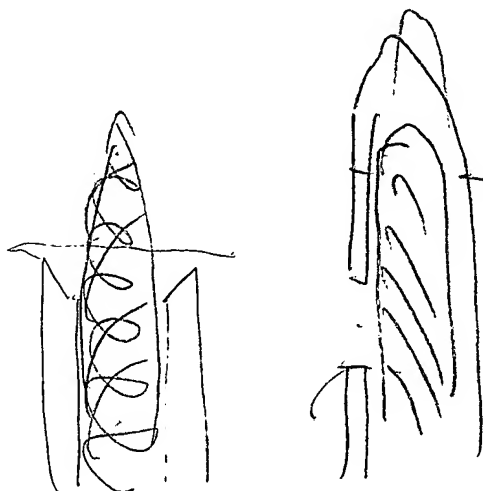
ART UNIT

PAPER NUMBER

3731

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

10/015,778

Applicant(s)

SJOSTROM, DOUGLAS D. *CD*

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5-22 are rejected under 35 U.S.C. 102 (b) as being anticipated by Shiber (U.S. 5,334,211).

Shiber discloses a cutting instrument (10) including an outer member (at 21) having a cutting edge (22); a helical knife (170) coupled to the outer member (at 21) for rotation relative to the outer member (at 21); wherein the helical knife (170) extended distally beyond the cutting edge (22) of the outer member (at 21); and wherein an inner member (at 71) received within the outer member (at 21), wherein the helical knife (170) located at a distal end of the inner member (at 71) as is claimed (Abstract, figures 2-3, col. 3 lines 35-67, col. 4 lines 5-67 and col. 5 lines 1-50)

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Shiber (U.S. Patent 5,334,211).

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Shiber is explained as before. Although, Shiber does not disclose a clearance between the inner member and the outer member is in the range of about 0.0005 to 0.002 inches. It would have been obvious matter of design choice to modify a clearance between the inner member and the outer member is in the range of about 0.0005 to 0.002 inches, since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art. In re-Rose, 105 USPQ 237 (CCPA 1955).

Claims 4 and 23-24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Shiber in view of Varsseveld (U.S.6,068,641).

Shiber teaches all aspect of the claimed invention except the inner member has an aspiration opening. Varsseveld teaches the inner member has an aspiration opening (figure 2, at 22) in order to allow fluid and tissue debris to draw out of the operation site. It would have been obvious to one of ordinary skill in the art at time of the invention to modify Shiber by adding the inner member has an aspiration opening in order to allow fluid and tissue debris to draw out of the operation site.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,857,995 to Thomas et al U.S. Pat. No. 5,135,531 to Shiber

U.S. Pat. No. 6,443,966 to Shiu

U.S. Pat. No. 5,913,867 to Dion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898.


The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen
Examiner
Art Unit 3731

vn
November 23, 2002


KEVIN T. TRUONG
PRIMARY EXAMINER

11/26/02